

U.S. Patent Application No.: 10/685,685  
Filing Date: October 15, 2003  
First Named Inventor: Anthony Costa

## REMARKS

Claims 1, 5-10, 12-15, 17-24 remain in the case, of which claims 18-24 have been withdrawn from consideration

Claim 1 has been amended in view of the Office Action and to better define what the Applicants consider their invention, as fully supported by an enabling disclosure.

Claim 16 is cancelled as redundant.

Reconsideration in view of the following remarks and entry of the foregoing amendments are respectfully requested.

## CLAIM REJECTION UNDER 35 USC § 112

Claims 1, 5-10 and 12-17 are rejected under 35 U.S.C. 112, first paragraph as failing to comply with the enablement requirement.

More specifically, the Examiner alleges that the claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Action page 2.

In an effort to further the prosecution and secure prompt allowance, claim 1 has been amended to specify that the gel matrix further comprises 32-45% w/w ethoxydiglycol and 1-6% w/w polysorbate surfactant, as supported by the specification as filed in paragraphs [0029] and [0033]-[0034] for example.

Applicants submit that claim 1 as amended and supported by the specification as filed clearly enables the person of ordinary skill in the art to reproduce the claimed gel matrix without undue experimentation.

Applicants respectfully present the following empirical experiment in support, based on the working example given in the application as filed (pages 9-11, paragraphs [0029]-

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[0035]), wherein some ingredients of Part B were substituted with water. More specifically, the following four (4) mixtures were made:

Mixture 1: complete Tropical Matrix Mixture (Parts A, B and C) as described in the example of the present application;

Mixture 2: complete Parts A and C, but in Part B Sweet Birch Extract was substituted with water;

Mixture 3: complete Parts A and C, but in Part B ethoxydiglycol was substituted with water; and

Mixture 4: complete Parts A and C, but part B was substituted with water.

The viscosity of each mixture was then measured (in CPS), and the results are given in the table below.

1	2	3	4
51	53	16300	5150

From this empirical experiment, it can be clearly seen that ethoxydiglycol and a polysorbate surfactant in Part B are sufficient to meet the claimed viscosity of the gel matrix before application (as shown for mixture 2 above).

In view of the above and foregoing, Applicants respectfully request that the Examiner reconsider and withdraw his rejection under 35 U.S.C 112, first paragraph.

#### **CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)**

Applicants acknowledge that the obviousness rejections have been withdrawn.

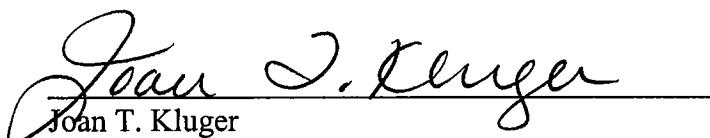
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### Conclusion

The rejections of the original claims are believed to have been overcome by the present remarks and the introduction of new claims. From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such an action is earnestly solicited.

Respectfully submitted,  
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